

Serial No. 09/784,292

Docket No.: KCC-15,171

REMARKS

Applicants' undersigned attorney thanks the Examiner for her comments. Applicants respectfully request reconsideration of this patent application, particularly in view of the following remarks. Currently, Claims 1-40 are pending.

Amendment to the Drawing

Objection to the replacement drawing for Fig. 8 is respectfully traversed in view of the new replacement drawing for Fig. 8 included at the end of this document.

The replacement drawing for Fig. 8 shows a tearable, non-refastenable seam represented by a line of juncture 100 across a surface joining two sections. As understood by those skilled in the art, the tearable, non-refastenable seam may also be a perforated line across the side panel, consistent with the definition of the term "seam," which is defined by the American Heritage® Dictionary of the English Language, Fourth Edition, as "a line across a surface, as a crack, fissure, or wrinkle."

Claim Rejections - 35 U.S.C. §103**A. Kuen '162 in view of Keuhn, Jr. et al. and Sauer**

The rejection of Claims 1-2, 5-12, 14-21, 23, 25, 27, 29-30, 34, and 36-39 under 35 U.S.C. §103(a) as being unpatentable over Kuen '162 (U.S. Patent No. 5,304,162) in view of Keuhn, Jr. et al. (U.S. Patent No. 5,374,262) and Sauer (U.S. Patent No. 5,624,428) is respectfully traversed.

Kuen '162 discloses a fastening system for absorbent articles that includes a pair of strap members that connect a front waist region of a garment to a back waist region of the garment. The strap members are generally rectangular in shape. Thus, the waist edge of each strap member is parallel with the leg edge of each strap member when the strap members are in a laid flat configuration.

Applicants' invention as recited in independent Claims 1, 21, and 34 requires each of the first and second side panels to have a waist edge non-parallel with a leg edge when the side panels are in a laid flat configuration. As explained at page 29, lines 16-19, of the specification, the leg end edge of each side panel can have a

KCC-2080

10

MR/S

PAGE 11/20 *RCVD AT 6/29/2004 1:06:02 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-1/3 * DNIS:8729306 * CSID:847 490 1403 * DURATION (mm:ss):03:12

Serial No. 09/784,292

Docket No.: KCC-15,171

curvature, as shown in Figs. 4-7, to allow the leg openings to conform about a wearer's legs.

To establish a *prima facie* case of obviousness, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. As pointed out by the Examiner, Kuen '162 states that the pleated region 50 of each strap member 40 may be rectangular in shape, "although other shapes are also possible." However, Kuen '162 fails to disclose or suggest any other shapes. Possible "other shapes" of the pleated region 50 include square, or shapes having parallel lines of curvature along the waist and leg edges. The most logical shape of the pleated region 50 is rectangular because rectangular is the shape that is illustrated and described in detail. There is no suggestion in Kuen '162 that these other shapes would include a waist edge that is non-parallel with a leg edge, and there is no motivation in Kuen '162 to use strap members that have a waist edge that is non-parallel with a leg edge.

Another requirement for establishing a *prima facie* case of obviousness is that the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on Applicants' disclosure.

Keuhn, Jr. et al. also discloses a fastening system for absorbent articles that includes a pair of strap members that connect a front waist region of a garment to a back waist region of the garment. As in Kuen '162, the strap members in a first embodiment of Keuhn, Jr. et al. are generally rectangular in shape, with a waist edge that is parallel to a leg edge when the strap members are in a laid flat configuration. Keuhn, Jr. et al. discloses a second embodiment (Col. 9, line 45 – Col. 10, line 34) in which the strap members project transversely outward from the back waist section, and are *not* releasably connected to the back waist section but instead are permanently connected to the back waist section and releasably connected to the front waist section.

KCC-2080

11

MR/S

PAGE 12/20 * RCVD AT 6/29/2004 1:06:02 PM (Eastern Daylight Time) * SVR:USPTO-EFXRF-1/3 * DNIS:8729306 * CSID:847 498 1403 * DURATION (mm:ss):05:12

Serial No. 09/784,292

Docket No.: KCC-15,171

As described in Keuhn, Jr. et al., in this second embodiment, the strap members may be formed from or attached to the backing sheet in the back waist section, and the strap members can be detached from the front waist section by virtue of hook and loop fasteners. Fig. 6 in Keuhn, Jr. et al. illustrates this second embodiment as having strap members with parallel edges along the waist edge and the leg edge in the refastenable front region and in the middle of the strap member, and the leg edge curves downward toward the leg opening in the back region where the strap member is permanently connected to the back waist region. Both the first embodiment and the second embodiment of Keuhn, Jr. et al. clearly suggest that refastenable strap members have parallel waist and leg edges in refastenable areas. In the first embodiment wherein both ends of the strap member are refastenable, there is no suggestion or motivation in Keuhn, Jr. et al. for the waist and leg edges to be non-parallel. Even in the second embodiment, wherein one end of the strap member is refastenable and the other end of the strap member is permanently attached to the back waist region, there is no suggestion or motivation in Keuhn, Jr. et al. for the waist and leg edges in the refastenable areas to be non-parallel. It is only the permanently connected area that derives any perceivable benefit from non-parallel strap member edges, the benefit being a larger bond area for a stronger, more permanent connection between the strap member and the back waist region. Thus, for a less permanent, releasable connection between the strap member and the front waist region, Keuhn, Jr. et al. suggests that parallel waist and leg edges are more suitable for releasably connected strap members.

Like the second embodiment in Keuhn, Jr. et al., Sauer also discloses a fastening system for absorbent articles that includes a pair of strap members permanently connected to a back waist region and releasably connected to a front waist region of the garment. Both the attached end 48 and the free (releasably attached) end 50 of the strap member are illustrated as having parallel waist and leg edges. Sauer states that the strap member may have any size and shape that provides the desired expansion of the absorbent article, and exemplary of such shapes are rectangular, triangular, square, elliptical and the like. Because one end of the strap member is permanently attached to the garment and the other member is releasably

KCC-2080

12

PAGE 13/20 * RCVD AT 6/29/2004 1:06:02 PM (Eastern Daylight Time) * SVR:USPTO-EFXRF-13 * DNI:8729306 * CSID:847 490 1403 * DURATION (mm:ss):03:12

Serial No. 09/784,292

Docket No.: KCC-15,171

attached to the garment, the same logic present in Keuhn, Jr. et al., with respect to strap shape is applicable to the strap shape in Sauer. That is, it is logical to have a greater surface area connection between the strap member and the garment along the permanently bonded area, and a smaller surface area connection between the strap member and the garment along the releasably bonded area. However, neither Keuhn, Jr. et al. nor Sauer provide any suggestion or motivation for the waist and leg edges in the refastenable areas to be non-parallel.

Kuen '162, Keuhn, Jr. et al., and Sauer each disclose strap members that are relatively thin and designed to sit at the top of a wearer's hips or at the wearer's waist, as opposed to side panels which extend from a waist opening to a leg opening and cover the wearer's hips. Furthermore, none of the three cited references, alone or in combination, disclose or suggest side panels that are releasably connected to both a front panel and a back panel with waist edges and leg edges that are non-parallel.

For at least the reasons given above, Applicants respectfully submit that the teachings of Kuen '162 in view of Keuhn, Jr. et al. and Sauer fail to disclose or suggest Applicants' claimed invention. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

B. Kuen '162, Keuhn, Jr. et al., and Sauer further in view of Yeo and Wallach

The rejection of Claims 13, 31-33, and 40 under 35 U.S.C. §103(e) as being unpatentable over Kuen '162, Keuhn, Jr. et al., and Sauer as applied to Claims 10, 21, and 34, *supra*, and further in view of Yeo (U.S. Patent No. 5,509,913) and Wallach (U.S. Patent No. 4,944,734) is respectfully traversed.

Claims 13, 31-33, and 40 are each directed to flushable parts of the chassis of the garment of the invention. Yeo and Wallach each disclose flushable or biodegradable compositions, with Wallach teaching the use of such materials in absorbent garments. The Examiner suggests that it would be obvious to one of ordinary skill in the art to employ flushable components for at least one, if not all, of the cover, liner and absorbent of the Kuen '162 disposable device as taught by Yeo and Wallach. However, Kuen '162, alone or in combination with Keuhn, Jr. et al.

KCC-2080

13

MR/S

PAGE 14/20 * RCVD AT 6/29/2004 1:06:02 PM [Eastern Daylight Time] * SVR:USPTO-EXRF-13 * DNIS:8729308 * CSID:847 490 1403 * DURATION (mm:ss):05:12

Serial No. 09/784,292

Docket No.: KCC-15,171

and/or Sauer, fails to disclose or suggest first and second side panels each having a waist edge non-parallel with a leg edge when the side panels are in a laid flat configuration. Therefore, even if flushable components were employed in the Kuen '162 disposable device, the combination would still result in a garment having rectangular strap members with *parallel* waist and leg edges when the strap members are in a laid flat configuration.

For at least the reasons given above, Applicants respectfully submit that the teachings of Kuen '162, Keuhn, Jr. et al, and Sauer as applied to Claims 10, 21, and 34, *supra*, and further in view of Yeo and Wallach fail to disclose or suggest Applicants' claimed invention. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

C. Kuen '162, Keuhn, Jr. et al., and Sauer further in view of Kuen '789

The rejection of Claims 3 and 35 under 35 U.S.C. §103(a) as being unpatentable over Kuen '162, Keuhn, Jr. et al, and Sauer as applied to Claims 1 and 34, *supra*, and further in view of Kuen '789 (U.S. Patent No. 5,423,789) is respectfully traversed.

Claims 3 and 35 both recite that each of the fastening components comprises a loop material and each mating fastening component comprises a hook material. Similar to Kuen '162, Kuen '789 discloses a garment including strap members that connect a front waist region of the garment to a back waist region of the garment. As shown in Figs. 1 and 3 of Kuen '789, the strap members have a generally rectangular shape wherein both the waist edge of the strap and the leg edge of the strap are linear and substantially parallel to each other in a laid flat configuration.

The Examiner suggests that it would be obvious to one of ordinary skill in the art to reverse the components of Kuen '162 such that the side panel fastener components are loop material while the chassis fastener components are hook material in view of the interchangeability as taught by Kuen '789. However, both Kuen '162, alone or in combination with Keuhn, Jr. et al. and/or Sauer, and Kuen '789 fail to disclose or suggest first and second side panels each having a waist edge non-parallel with a leg edge in a laid flat configuration. Therefore, even if the

KCC-2080

14

MD/SC

Serial No. 09/784,292

Docket No.: KCC-15,171

fastening components of Kuen '162 were reversed, the resulting garment would still have rectangular strap members with parallel waist and leg edges when the strap members are in a laid flat configuration.

For at least the reasons given above, Applicants respectfully submit that the teachings of Kuen '162, Keuhn, Jr. et al, and Sauer as applied to Claims 1 and 34, supra, and further in view of Kuen '789 fail to disclose or suggest Applicants' claimed invention. Thus, Applicants respectfully request withdrawal of this rejection.

D. Kuen '162, Keuhn, Jr. et al., and Sauer further in view of LaFortune et al.

The rejection of Claim 4 under 35 U.S.C. §103(a) as being unpatentable over Kuen '162, Keuhn, Jr. et al, and Sauer as applied to Claim 1, supra, and further in view of LaFortune et al. (U.S. Patent No. 5,669,901) is respectfully traversed.

Claim 4 is directed to a garment including two fastening components and two mating fastening components each comprising hook material, and two fastening components and two mating fastening components each comprising loop material. Similar to Kuen '162, LaFortune et al. disclose a garment including a pair of strap members that connect a front waist region of the garment to a back waist region of the garment. As shown in Figs. 1 and 6 of LaFortune et al., the strap members have a generally rectangular shape wherein both the waist edge of the strap and the leg edge of the strap are linear and substantially parallel to each other in a laid flat configuration.

The Examiner suggests that it would be obvious to one of ordinary skill in the art to make the hook fastening components and loop mating fastening components of Kuen '162 fastening components including two hook and two loop material components and the mating fastening components including two loop and two hook material components, respectively, instead, in view of the interchangeability as taught by LaFortune et al.

However, both Kuen '162, alone or in combination with Keuhn, Jr. et al. and/or Sauer, and LaFortune et al. fail to disclose or suggest first and second side panels each having a waist edge non-parallel with a leg edge when in a laid flat configuration. Therefore, even if the fastening components of Kuen '162 were

KCC-2080

15

MR/S

PAGE 16/20 * RCVD AT 6/29/2004 1:05:02 PM [Eastern Daylight Time] * SVR:USPTO-EFYRF-113 * DMS:8728308 * CSID:847 498 1403 * DURATION (mm:ss):05:12

Serial No. 09/784,292

Docket No.: KCC-15,171

interchanged, the resulting garment would still have rectangular strap members with parallel waist and leg edges when in a laid flat configuration.

For at least the reasons given above, Applicants respectfully submit that the teachings of Kuen '162, Keuhn, Jr. et al, and Sauer as applied to Claim 1, supra, and further in view of LaFortune et al. fail to disclose or suggest Applicants' claimed invention. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

E. Kuen '162, Keuhn, Jr. et al., and Sauer further in view of Ygge et al.

The rejection of Claims 22, 24, 26, and 28 under 35 U.S.C. §103(a) as being unpatentable over Kuen '162, Keuhn, Jr. et al, and Sauer as applied to Claim 21, supra, and further in view of Ygge et al. (U.S. Patent 5,549,593) is respectfully traversed.

Claims 22, 24, 26, and 28 are each directed to absorbent garments having a fastening material on an inner surface of the chassis and a mating fastening material on an outer surface of the releasably attached side panels. Ygge et al. show an absorbent garment having fastening material on either an inner surface or an outer surface with a corresponding waist belt having mating fastening material on either an inner surface or an outer surface. As shown in Figs. 2, 3, 6, and 7 of Ygge et al., the waist belt has a generally rectangular shape wherein both the waist edge of the belt and the leg edge of the belt would appear to be linear and substantially parallel to each other in a laid flat configuration.

The Examiner suggests that it would be obvious to one of ordinary skill in the art to make the chassis outside fasteners and the inside side panel mating fasteners of the Kuen '162 chassis inside fasteners and side panel outside mating fasteners instead in view of the interchangeability as taught by Ygge et al.

However, both Kuen '162, alone or in combination with Keuhn, Jr. et al. and/or Sauer, and Ygge et al. fail to disclose or suggest first and second side panels each having a waist edge non-parallel with a leg edge in a laid flat configuration. Therefore, even if the locations of the fastening components of Kuen '162 were interchanged, the resulting garment would still have rectangular strap members with parallel waist and leg edges when in a laid flat configuration.

KCC-2080

16

MD/C

PAGE 17/20 : RCV'D AT 6/29/2004 1:06:02 PM [Eastern Daylight Time] : SVR:USPTO-EFXRF-1/3 : DMS:8729306 : CSID:847 490 1403 : DURATION (mm:ss):05:12

Serial No. 09/784,292

Docket No.: KCC-15,171

For at least the reasons given above, Applicants respectfully submit that the teachings of Kuen '162, Keuhn, Jr. et al, and Sauer as applied to Claim 21, supra, and further in view of Ygge et al. fail to disclose or suggest Applicants' claimed invention. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

Double Patenting Rejection

The provisional rejection of Claims 1-2, 6, 10-11, 17, 19, 21, 30, 34, and 35 under the judicially created doctrine of obviousness-type double patenting over claims 1-16, 20-26, 28-45, and 48-51 of copending U.S. Application No. 10/032,383 (2003/0120253) is respectfully traversed.

The present application and U.S. Application No. 10/032,383 are pending. Allowable subject matter, notwithstanding the provisional obviousness-type double patenting rejection, has not been indicated in either of these applications. Where a provisional rejection under the judicially created doctrine of obviousness-type double patenting is made between two or more applications, MPEP §804(I)(B) states that "[i]f the 'provisional' double patenting rejection in one application is the only rejection remaining in that application, the examiner should then withdraw that rejection and permit the application to issue as a patent, thereby converting the 'provisional' double patenting rejection in the other application(s) into a double patenting rejection at the time the one application issues as a patent." It is not evident which of the pending applications will become allowable first. Therefore, any action by Applicants with regard to this provisional rejection is premature.

Statement Concerning Common Ownership

In response to the Examiner's assertion that Claims 1-2, 6, 10-11, 17, 19, 21, 30, 34, and 35 are directed to an invention not patentably distinct from Claims 1-16, 20-26, 28-45, and 48-51 of commonly assigned copending U.S. Patent Application No. 10/032,383, Applicants' undersigned attorney hereby states that U.S. Patent Application Nos. 09/784,292 and 10/032,383 were, at the time the invention of Application No. 09/784,292 was made, owned by Kimberly-Clark Worldwide, Inc.

KCC-2080

17

PAGE 18/20 * RCVD AT 6/29/2004 1:06:02 PM [Eastern Daylight Time] * SVR:USPTO-EFAXP-13 * DMS:8729306 * CSID:847 498 1403 * DURATION (mm:ss):05:12

Serial No. 09/784,292

Docket No.: KCC-15,171

Conclusion

Applicants intend to be fully responsive to the outstanding Office Action. If the Examiner detects any issue which the Examiner believes Applicants have not addressed in this response, Applicants' undersigned attorney requests a telephone interview with the Examiner.

Applicants sincerely believe that this Patent Application is now in condition for allowance and, thus, respectfully request early allowance.

Respectfully submitted,



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KCC-2080

18

MR/S

PAGE 19/20 * RCVD AT 6/29/2004 1:06:02 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-13 * DNIIS:8729306 * CSID:8474901403 * DURATION (mm:ss):05:12